

§ 658.604 Assessment and evaluation of program performance data.

(a) State agencies shall compile program performance data required by ETA, including statistical information on program operations.

(b) The ETA shall use the program performance data in assessing and evaluating whether the State agencies have complied with JS regulations and their State agency program budget plans.

(c) In assessing and evaluating program performance data, the ETA shall act in accordance with the following general principles:

(1) The fact that the program performance data from a State agency, whether overall or relative to a particular program activity, indicate poor program performance does not by itself constitute a violation of JS regulations or of the State agency's responsibilities under its State agency program budget plan;

(2) Program performance data, however, may so strongly indicate that a State agency's performance is poor that the data may raise a presumption (*prima facie* case) that a State agency is violating JS regulations or the State agency program budget plan. A State agency's failure to meet the operational objectives set forth in the PBP shall raise a presumption that the agency is violating JS regulations and/or its PBP. In such cases the ETA shall afford the State agency an opportunity to rebut the presumption of a violation pursuant to the procedures at subpart H of this part.

(3) The ETA shall take into account that certain program performance data may measure items over which State agencies have direct or substantial control while other data may measure items over which the State agency has indirect or minimal control.

(i) Generally, for example, a State agency has direct and substantial control over the delivery of job services such as referrals to jobs, job development contacts, applicant counseling, referrals to supportive services and the conduct of field checks.

(ii) State agencies, however, have only indirect control over the outcome of services. State agencies, for example, cannot guarantee that an employer will hire a referred applicant, nor can

they guarantee that the terms and conditions of employment will be as stated on a job order.

(iii) Outside forces, moreover, such as a sudden heavy increase in unemployment rates, a strike by State agency employees, or a severe drought or flood may skew the results measured by program performance data;

(4) The ETA shall consider a State agency's failure to keep accurate and complete program performance data required by JS regulations as a violation of the JS regulations.

§ 658.605 Communication of findings to State agencies.

(a) The Regional Administrator shall inform State agencies in writing of the results of review and assessment activities and, as appropriate, shall discuss with the State Administrator the impact or action required by ETA as a result of review and assessment activities.

(b) The ETA national office shall transmit the results of any review and assessment activities conducted by it to the Regional Administrator who shall send the information to the State agency.

(c) Whenever the review and assessment indicates a State agency violation of JS regulations or its State agency program budget plan, the Regional Administrator shall follow the procedures set forth at subpart H of this part.

(d) Regional Administrators shall follow-up any corrective action plan imposed on a State agency under subpart H of this part by further review and assessment of the State agency pursuant to this subpart.

Subpart H—Federal Application of Remedial Action to State Agencies

AUTHORITY: Wagner-Peyser Act of 1933, as amended, 29 U.S.C. 49 *et seq.*; 5 U.S.C. 301 *et seq.*

§ 658.700 Scope and purpose of subpart.

This subpart sets forth the procedures which ETA shall follow upon either discovering independently or receiving from other(s) information indicating that State agencies may not be adhering to JS regulations.

§ 658.701 Statements of policy.

(a) It is the policy of the Employment and Training Administration (ETA) to take all necessary action, including the imposition of the full range of sanctions set forth in this subpart, to ensure that State agencies comply with all requirements established by JS regulations.

(b) It is the policy of ETA to initiate decertification procedures against State agencies in instances of serious or continual violations of JS regulations if less stringent remedial actions taken in accordance with this subpart fail to resolve noncompliance.

(c) It is the policy of the ETA to act on information concerning alleged violations by State agencies of the JS regulations received from any person or organization.

§ 658.702 Initial action by the Regional Administrator.

(a) The ETA Regional Administrator shall be responsible for ensuring that all State agencies in his/her region are in compliance with JS regulations.

(b) Wherever a Regional Administrator discovers or is apprised of possible State agency violations of JS regulations by the review and assessment activities under subpart G of this part, or through required reports or written complaints from individuals, organizations or employers which are elevated to ETA after the exhaustion of State agency administrative remedies, the Regional Administrator shall conduct an investigation. Within 10 days after receipt of the report or other information, the Regional Administrator shall make a determination whether there is probable cause to believe that a State agency has violated JS regulations.

(c) The Regional Administrator shall accept complaints regarding possible State agency violations of JS regulations from employee organizations, employers or other groups, without ex-

haustion of the complaint process described at subpart E, if the Regional Administrator determines that the nature and scope of the complaint are such that the time required to exhaust the administrative procedures at the State level would adversely affect a significant number of applicants. In such cases, the Regional Administrator shall investigate the matter within 10 working days, may provide the State agency 10 working days for comment, and shall make a determination within an additional 10 working days whether there is probable cause to believe that the State agency has violated JS regulations.

(d) If the Regional Administrator determines that there is no probable cause to believe that a State agency has violated JS regulations, he/she shall retain all reports and supporting information in ETA files. In all cases where the Regional Administrator has insufficient information to make a probable cause determination, he/she shall so notify the Administrator in writing and the time for the investigation shall be extended 20 additional working days.

(e) If the Regional Administrator determines that there is probable cause to believe that a State agency has violated JS regulations, he/she shall issue a Notice of Initial Findings of Non-compliance by registered mail to the offending State agency. The Notice will specify the nature of the violation, cite the regulations involved, and indicate corrective action which may be imposed in accordance with paragraphs (g) and (h) of this section. If the non-compliance involves services to MSFWs or the JS complaint system, a copy of said notice shall be sent to the National MSFW Monitor Advocate.

(f)(1) The State agency shall have 20 working days to comment on the findings, or a longer period, up to 20 additional days, if the Regional Administrator determines that such a longer period is appropriate. The State agency's comments shall include agreement or disagreement with the findings and suggested corrective actions, where appropriate.

(2) After the period elapses, the Regional Administrator shall prepare within 20 working days, written final